

1 Thomas H. Bienert, Jr., State Bar No. 135311
tbienert@bmkattorneys.com
2 Kenneth M. Miller, State Bar No. 151874
3 kmiller@bmkattorneys.com
4 Anthony R. Bisconti, State Bar No. 269230
tbisconti@bmkattorneys.com
5 Whitney Z. Bernstein, State Bar No. 304917
wbernstein@bmkattorneys.com
6 **BIENERT, MILLER & KATZMAN, PLC**
7 903 Calle Amanecer, Suite 350
8 San Clemente, California 92673
9 Telephone (949) 369-3700
Facsimile (949) 369-3701
10 Attorneys for Movant James Larkin

11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
13

14 **In the Matter of the Seizure of:**

Case No.: 2:18-cv-06742-RGK (PJW)

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16 Any and all funds held in Republic Bank of
17 Arizona Account(s) xxxx1889, xxxx2592,
18 xxxx1938, xxxx2912, and, xxxx2500.
19

**NOTICE OF MATERIAL
DEVELOPMENT RE:
GOVERNMENT'S EX PARTE
APPLICATION FOR PARTIAL STAY
(DOC. NO. 79)**

20 On September 25, 2015, Movant Larkin filed his Motion to Access and Use
21 Purportedly Inadvertently Produced Materials (the "Motion to Access") (Doc. No. 69).
22 Movants Spear, Brunst, and Lacey joined in the Motion to Access. Doc. Nos. 72, 73, 76.
23 The government has not responded to the Motion to Access, and its time to respond under
24 the local rules has passed.

25 On October 12, 2018, the government filed an *Ex Parte* Application for Partial Stay.
26 Doc. No. 79. In its *Ex Parte* Application, the government claimed it could not respond to
27 the Motion to Access "without divulging its thought processes and legal strategy in
28 connection with the Arizona criminal matter," purportedly entitling it to a stay under 18

1 U.S.C. § 981(g)(1). Doc. 79 at 3. Section 981(g)(1) requires a court to stay civil forfeiture
2 proceedings, but only if the government establishes that forcing it to respond to discovery
3 requests in the civil forfeiture proceedings will undermine its ability to prosecute a related
4 criminal case. Movants filed their Opposition to the *Ex Parte* Application on October 16,
5 2018 noting, among other things, that Movants have not sought discovery and do not intend
6 to do so. Doc. No. 80.

7 On October 17, 2018, the government filed under seal in the District of Arizona a
8 motion seeking an order compelling Movants to destroy the documents the government
9 claims were inadvertently produced. The government did not inform the court in Arizona
10 of the Motion to Access relating to the same documents pending in this court or that it had
11 failed to respond to the Motion to Access. The government's motion in Arizona eviscerates
12 its argument that responding to the Motion to Access in this court would undermine its
13 ability to prosecute its case in Arizona—as the government now has purposefully injected
14 the same issues into the case in Arizona and will have to explain its positions there. Section
15 981(g) is not a tool to allow the government to forum shop, by claiming that litigating an
16 issue in one district court will harm its case, but litigating the same issue in another district
17 court will not. Accordingly, the government's recent filing in Arizona is further reason to
18 deny its *Ex Parte* Application to stay these proceedings.

19 Respectfully submitted,

20 Dated: October 19, 2018

/s/ Thomas H. Bienert, Jr.

21 BIENERT, MILLER & KATZMAN, PLC
22 Attorneys for James Larkin
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CERTIFICATE OF SERVICE

I certify that on this 19th day of October 2018, I electronically transmitted a PDF version of this document to the Clerk of the Court, using the CM/ECF System, for filing and for transmittal of a Notice of Electronic Filing to the following CM/ECF registrants listed below

/s/ Toni Thomas
Toni Thomas

John Kucera, Assistant U.S. Attorney, john.kucera@usdoj.gov
Kenneth M. Miller, Bienert Miller & Katzman PLC, kmiller@bmkattorneys.com
Anthony R. Bisconti, Bienert Miller & Katzman PLC, tbisconti@bmkattorneys.com
James C. Grant, Davis Wright Tremaine LLP, jamesgrant@dwt.com
Robert Corn-Revere, Davis Wright Tremaine LLP, bobcornrevere@dwt.com
Scott R. Commerson, Davis Wright Tremaine LLP, scottcommerson@dwt.com
Thomas H. Bienert, Jr., Bienert Miller & Katzman PLC, tbienert@bmkattorneys.com
Whitney Z. Bernstein, Bienert Miller & Katzman PLC, wbernstein@bmkattorneys.com
Gary S. Lincenberg, Bird Marella Boxer Wolpert Nessim Dooks Lincenberg and Rhow, gsl@birdmarella.com
Ariel A. Neuman, Bird Marella Boxer Wolpert Nessim Dooks Lincenberg and Rhow, aan@birdmarella.com
Gopi K. Panchapakesan, Bird Marella Boxer Wolpert Nessim Dooks Lincenberg and Rhow, gkp@birdmarella.com
Erin E. McCampbell, Lipsitz Green Scime Cambria LLP, emccampbell@lglaw.com
Janey Henze Cook, Henze Cooke Murphy PLLC, janey@henzecoockmurphy.com
Paul J. Cambria, Jr., Lipsitz Green Scime Cambria LLP, pcambria@lglaw.com
John K. Rubiner, Barton Klugman and Oetting LLP, jrubiner@bkolaw.com
Bruce S. Feder, Feder Law Office PA, bf@federlawpa.com